IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6300 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

G S R T CORPN

Versus

JAGDISHSINH DHIRUBHA RAIJADA C/O GK RATHOD

Appearance:

MR HARDIK C RAWAL for Petitioner

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 24/08/2000

C.A.V. JUDGEMENT

1. Heard the learned counsel for the parties. This petition challenges the award of the Labour Court, Junagadh made in Reference (LCJ) No.35 of 1998 whereby the order of dismissal of the respondent is quashed and

he is ordered to be reinstated with 40% backwages from 12.11.1997 with costs.

2. The respondent, employed as a conductor under the petitioner, was dismissed mainly on the basis of the charge that he had entered into the service by cheating insofar as he had submitted the application in the form meant for other post and had obtained such form from an employment exchange without being registered with any employment exchange. A departmental inquiry was held and the respondent was found guilty of the charge, as a result of which he came to be dismissed on 27.6.1995. His departmental appeals were also dismissed. Upon approaching the Labour Court by raising an industrial dispute, considering the evidence on record, the Labour Court has recorded findings of fact to the effect that the respondent was recruited after following the prescribed procedure and scrutiny of his application; that the application form in question was not produced in the departmental inquiry; that the staff who scrutinized the forms were not examined and the facts which were not proved during the inquiry were taken into account in the findings of the inquiry. Thus, having come to the conclusion that the charge against the respondent was not proved, the dismissal was held to be illegal by the impugned order.

3. Further taking note of the fact that the respondent had not deposed as to whether he remained unemployed during the pendency of the reference and in view of the dispute having been raised only in November 1997, the backwages were awarded at the rate of 40% from 12.11.1997.

4. The learned counsel for the petitioner has not produced any material and has not canvassed any ground to differ from the findings of fact recorded by the Labour Court in the impugned award. Mere assertion of the contention that the charges against the respondent were proved and that the Labour Court ought not to have interfered with the punishment cannot take the case of the petitioner any further. The charges against the respondent are indeed serious. However, in exercise of the powers under Article 227 of the Constitution, the findings of fact of the lower Court cannot be interfered unless it is shown from the material on record that the findings are perverse or illegal. As seen earlier, the Labour Court has, after an elaborate discussion of the evidence, recorded the finding that the misconduct alleged against the respondent is not proved. In such circumstances, the petitioner has failed to make out a

case for quashing the impugned award. However, in the facts and circumstances, it was insisted that the order regarding backwages is required to be quashed. Even in absence of any evidence of alternative gainful employment during the pendency of the reference, it is conceded on behalf of the respondent that the backwages may be reduced as unduly long period had elapsed during the pendency of the reference.

5. Therefore, in the peculiar facts and circumstances, the petition is partly allowed and the impugned award and order is modified to the extent that the respondent shall be entitled to only 10% of the backwages from 12.11.1997. The rest of the impugned order is upheld and shall be implemented within four weeks from today. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

(KMG Thilake)

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